NEIFELD REF.: DEATON-18-USC1

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: DEATON et al. USPTO CONFIRMATION CODE: 8230

SERIAL NO: 08/935,116

FILED: 9/22/1997

EXAMINER: ALVAREZ, Raquel

GROUP ART UNIT: 3622

FOR: System, Method and Database for Processing Transactions

37 CFR 41.37 APPEAL BRIEF

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22213-1450

Sir:

In response to the final office action mailed February 17, 2006, the applicants appeal.

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I. **37 CFR 41.37 (a)(1) and (2)**

The applicant submits herewith a Notice of Appeal and fee therefore.

II. **37 CFR 41.37 (b)**

The applicant submits the fee for appeal herewith.

III. **37 CFR 41.37 (c)(1)**

A. **37 CFR 41.37 (c)(1)(i) Real Party in Interest**

The real party in interest is Catalina Marketing International, Inc., a Delaware corporation, which is wholly owned by Catalina Marketing Corporation, a Delaware corporation.

B. **37 CFR 41.37 (c)(1)(ii) Related Appeals and Interferences**

There are no related appeals or interferences.

C. **37 CFR 41.37 (c)(1)(iii) Status of Claims**

Claims 8-16 are pending. Claims 17-76 are pending and withdrawn. The applicant points out that the examiner has incorrectly noted only claims 8-16 on the first page of the office action summary under "Disposition of Claims".

D. **37 CFR 41.37 (c)(1)(iv) Status of Amendments**

There are no outstanding amendments.

E. **37 CFR 41.37 (c)(1)(v) Summary of the Claimed Subject Matter**

Claim 8 defines a system for accumulating customer transaction data at the point-of-sale in a retail establishment and for effectuating customer promotion on the basis thereof, comprising (page 18 line 4 through page 19 line 12, figure 1: 110, 112, 114, 116, 117, 118, and 120): a terminal for entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction; means for allowing entry of customer transaction data (page 21 lines 7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); a processor (page 18 line 13, figure 1: 112) and a memory responsive to said terminal and said means allowing entry for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code (page 34 line 28 through page 37 line 8); and circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer (page 16 lines 9-18), said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit (page 16 lines 19-23), and said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion (page 1 lines 3-10).

Claim 9 defines a system for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising (page 18 line 4 through page 19 line 12, figure 1: 110, 112, 114, 116, 117, 118, and 120): apparatus for entering unique customer identification codes from customer identification presented at the point-of-sale in said retail establishment; a terminal for entering customer transaction data at the point-of-sale in said retail establishment (page 21 lines 7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); a processor (page 18 line 13, figure 1: 112) and a memory responsive to said apparatus and said terminal for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored

in association with said individual customer's unique identification code (page 34 line 28 through page 37 line 8); and circuitry associated with said memory and responsive to the entry of said individual customer's identification code during a transaction at the point-of-sale, said circuitry being operable to generate a customer information response signal at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit (page 16 lines 9-23), said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion (page 1 lines 3-10).

Claim 10 defines a method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of (page 18 line 4 through page 19 line 12, figure 1: 110, 112, 114, 116, 117, 118, and 120): entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction; entering customer transaction data (page 21 lines 7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code (page 34 line 28 through page 37 line 8); and generating a customer information response at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer (page 16 lines 9-18), said response signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit (page 16 lines 19-23), and said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion (page 1 lines 3-10).

Claim 11 defines a method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of (page 18 line 4 through page 19 line 12, figure 1: 110, 112, 114, 116, 117, 118, and 120): entering unique customer identification codes from customer identification presented at the point-of-sale in a retail establishment; entering customer transaction data at the point-of-sale in said retail establishment (page 21 lines

7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code (page 34 line 28 through page 37 line 8); accessing said database in response to the entry of said individual customer's identification code during a transaction at the point-of-sale (page 16 lines 9-18); determining from said database the transaction history of said individual customer; and generating a customer information response at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit (page 16 lines 19-23), said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion (page 1 lines 3-10).

Claim 15 defines a method for providing customer services in a retail establishment, comprising the steps of (page 18 line 4 through page 19 line 12, figure 1: 110, 112, 114, 116, 117, 118, and 120): entering into a point-of-sale terminal a unique identification code for a customer; entering into said terminal transaction data relating to the customer's shopping transactions (page 21 lines 7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); generating and maintaining a database, including the step of correlating said transaction data with said unique identification code (page 34 line 28 through page 37 line 8); responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order to generate a response which is a function of said data in said database from prior transactions, and by supplying said response to said terminal during said current transaction in which said unique identification code is entered (page 16 lines 9-18), said response including information for effecting a targeted promotion to the customer (page 1 lines 3-10).

Claim 16 defines a method for providing services or promotions to customers in a retail establishment, comprising the steps of (page 18 line 4 through page 19 line 12, figure 1: 110,

112, 114, 116, 117, 118, and 120): entering into a point-of-sale terminal an account number from a payment instrument presented by a customer, and using said account number as a unique identification code for the customer; entering into said terminal transaction data relating to the customer's shopping transactions (page 21 lines 7-22, figure 2A: 120, 122, and 124, figure 2B: 124, 130, 132, 134, 136, and 138); generating and maintaining a database, including the step of correlating said transaction data with said unique identification code, said transaction data including data from at least one past transaction of each customer (page 34 line 28 through page 37 line 8; page 16 lines 9-18); and using said database to effect customer services which include targeted marketing and/or promotions, said using step including the step of analyzing said transaction data of the customer (page 1 lines 3-10).

F. **37 CFR 41.37 (c)(1)(vi) Grounds of Rejection to be Reviewed on Appeal**

Whether the rejections of claims 8-16 under 35 USC 102(e) as being anticipated by Nichtberger et al. (4,882,675 hereinafter "Nichtberger") are improper and should be reversed.

G. **37 CFR 41.37 (c)(1)(vii) Argument**

1. **The Rejections of Claims 8-16 Under 35 USC 102(e) as Being Anticipated by US Patent No. 4,882,675 to Nichtberger et al. (hereinafter referred to as Nichtberger) are Improper and Should be Reversed**

In support of the rejections of claims 8-16 under 35 UC 102(b) as being anticipated by Nichtberger, the examiner stated that:

> With respect to claims 8-15, Nichtberger teaches a system for accumulating customer transaction data at the point of sale in a retail establishment and for effectuating customer promotion (abstract). A terminal for entering unique customer identification codes from customer identification presented at the point of sale in a retail transaction (col. 17, lines 30-48); means for allowing entry of customer transaction data (col. 17, lines 49-60); a processor

and a memory responsive to said terminal and said means allowing entry for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code (col. 12, lines 16-32); circuitry responsive to said processor, memory, and a database for generating a customer information response signal at the point of sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer (col. 11, lines 46-50 and col. 18, lines 49-61); said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit (col. 17, lines 49-61); and said signal providing information at said point of sale terminal derived from said database and useful for effectuating targeted customer promotion (col. 17, lines 49-61).

Claim 16 differs from claims 8-15 in that it further recites that the entering step into a point-of-sale terminal is an account number from a payment instrument presented by a customer. Nichtberger teaches that a credit card with a magnetic stripe can be used to activate the system (col. 19, lines 63 to col. 20, lines 1-7). [Office action mailed February 17, 2006 page 2 line 16 through page 3 line 11.]

In brief summary, the examiner is incorrect because Nichtberger's CDR 20 is not a point of sale terminal, and it is not at a point of sale location. Nichtberger's CDR 20 is a location and functional structure at which customer's are presented with marketing offers and that records customer's selections of marketing offers. Therefore, Nichtberger's signals provided to CDR 20 (marketing offers displayed to customers) do not correspond to "generating a customer information response signal at the point of sale during said individual customer's transaction in said retail establishment" which signals are "related to said individual customer's transaction data in shopping visits prior to the current shopping visit." In fact, Nichtberger missed the boat, so to speak, because his system requires the customers to select coupons, that is, the customer's must perform an affirmative conscious action to receive a coupon. In contrast, the system and method

defined by the appealed claims automatically respond to a customer purchasing goods in a store. For the system and method defined by the appealed claims, the customer need take no action he or she otherwise would not take. In fact, systems today that produce coupons and other marketing communications at the point of sale in response to the presence of the customer at the point of sale, based upon the customer's prior transactions from previous visits to the store are ubiquitous. In contrast, Nichtberger-like systems that allow a customer to select a coupon in the store prior to when the customer purchases goods, if they even exist, are certainly not ubiquitous.

2. What Nichtberger Teaches

Nichtberger is directed to distributing and, in the same shopping visit, redeeming, and subsequently clearing electronic coupons. Nichtberger's abstract is a reasonable summary. It states that:

> Cents-off merchandise coupons are distributed and redeemed immediately and electronically. **An electronic display of coupons valid for use in a particular store is presented to customers in that store**. When a customer makes a selection of coupons from the display, the selection is recorded. **The customer is subsequently identified at a store checkout station as the one who made the selection**. In a preferred embodiment, the identification is made by scanning a special card adapted for use with the system. The items purchased in the store by the customer are recorded, and any matches between the coupons selected and the items purchased are determined electronically. The customer is immediately credited in accordance with the terms of the matched coupons. Redeemed coupons are periodically cleared electronically.

Nichtberger Fig. 1 shows the Nichtberger's computer system in relation to physical structure. It shows an "operations center" 8 located distinct from each store 10. Each store includes a local CDR unit 20 distinct from the automated UPC scanning checkout system 18.

Nichtberger discloses that the CDR unit 20 is what displays to a customer potential coupons for that customer, and that the customer must select which of those potential coupons

the customer wants. Column 5 lines 5-16, column 10 line 51 to column 11 line 45, and column 13 line 65 to column 14 line 4. That is prior to the customer purchasing any products. This is what occurs at CDR 20.

Nichtberger discloses that the customer thereafter purchases products, and Nichtberger's system determines if the customer's selected coupons match to products in the customer's purchase. If so, Nichtberger's system provides to the customer the discount associated with the selected coupon. Column 17 lines 29 to column 18 lines 41. Thus, Nichtberger discloses that product purchase occurs at automated UPC scanning checkout system 18, not at CDR 20. In Nichtberger, "[t]he UPC codes of items customers purchased are scanned or key-entered into an electronic cash register, as indicated at 74." Column 17 lines 45-48. "The cash register terminal (or local processor) compares the customer's selections with the products actually being purchased, as indicated at 64, and applies credit accordingly, as indicated at 76." Nichtberger column 17 lines 52-56.

Do not confuse the CDR 20's redemption logging function with product transactions occurring at the point of sale/checkout system! "Upon receipt of redemption data from the checkout system's processor, the CDR unit 20 stores this information in a file of redemptions by customer, as indicated at 78. Later, the local CDR unit 20 is called by the CPU 16 and this file is transmitted to the CPU 16." Nichtberger figure 1 shows that central processor 16 is located remote from the POS at operations center. The operations center acts as a clearinghouse for the coupons and reports may be sent to retailers and manufacturers. Nichtberger column 18 lines 20-26.

3. What Nichtberger Does not Teach

Nichtberger does not disclose generating a customer information response signal at the POS during a customer's transaction that is based upon the customer's prior purchases during a previous shopping visit to the store. Nor does Nichtberger disclose using information from a customer information response signal at the POS during a transaction to effectuate a targeted customer promotion.

Regarding marketing, Nichtberger column 28 line 51 through column 29 line 3 states

that:

> An important feature of the invention is that a customer's demographic information may be magnetically encoded on the card such that when the customer is identified by CDR unit 20, possibly by spoken name, certain select coupons will be shown to the particular individual who meet preselected criteria. This would allow a manufacturer to give coupons to customers (for example) who chose another manufacturer's coupons the preceding week. It would also allow many coupons to be in the system, without displaying all coupons to all customers. As another example, the account number may indicate that a particular cardholder owns a dog. This affords an opportunity to display to the cardholder a selection of coupons appropriate for dog owners, while omitting such a display in the case of other cardholders who do not own dogs.
>
> In accordance with the invention, all of the products purchased by a customer could be "saved" in a modified kiosk, or, alternatively, in the POS system storage. Those purchases could then be associated with the purchaser, whose name and data would be known.

The foregoing passage includes the statement "This would allow a manufacturer to give coupons to customers (for example) who chose another manufacturer's coupons the preceding week." Note two things. First, Nichtberger discloses the coupons are provided at CDR 20, not at the point of sale terminal (checkout/cash register). Therefore, giving coupons to customers based upon the customer's selection of coupons from a previous visit does not meet the signal at the point of sale limitations of the appealed claims. Second, the signal received at CDR 20 based upon a customer's prior selection of coupons does not meet the limitation of the appealed claims that the signal is based upon the customer's prior purchases. Coupon selections are not purchases. Thus, Nichtberger's disclosure of marketing fails to disclose or suggest all relevant limitations.

The examiner asserted that Nichtberger teaches "means for allowing entry of customer transaction data," citing col. 17, lines 49-60. Column 17 lines 49 et seq. refers to the checkout system, not the CDR 20.

The examiner asserted that Nichtberger teaches "a processor and a memory responsive to said terminal and said means allowing entry for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code," citing col. 12, lines 16-32. What terminal? Column 12 lines 16-32 describe part of what happens at the CDR 20, not at the checkout/point of sale.

The examiner asserted that Nichtberger teaches "circuitry responsive to said processor, memory, and a database for generating a customer information response signal at the point of sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer, citing col. 11, lines 46-50 and col. 18, lines 49-61. What processor? Column 11 lines 46-50 describe transmission of coupon selection information from selections made at the CDR 20 to the point of sale processor.

The examiner asserted that Nichtberger teaches "said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit," citing col. 17, lines 49-61. That assertion is incorrect. Column 17 lines 49-61 disclose no signal transmitted to the point of sale that is related to the customer's transaction data in shopping visits prior to the current shopping visit. Column 17 lines 49-61 discloses comparing the customer's selections of coupons to the customer's product purchases. First, Nichtberger's coupon selections are from the same shopping visit, not a prior shopping visit. Second, Nichtberger's coupon selections are not transaction data as defined in this application. See for example specification page 1 describing transactions in conjunction with check payment ("This invention relates to transaction precessing... including check verification) and page 2 ("check transactions"; high "transactional volume with checks". In fact, the specification contains many references to transactions in connection with purchase, via check or otherwise, of goods. Accordingly, any correspondence of Nichtberger's signals based upon Nichtberger's use of coupon selections to process a transaction with the claimed 'signal [transmitted to the point of sale] being related to

said individual customer's transaction data in shopping visits prior to the current shopping visit" is improper.

The examiner asserted that Nichtberger teaches "said signal providing information at said point of sale terminal derived from said database and useful for effectuating targeted customer promotion," citing col. 17, lines 49-61. That assertion is incorrect. The claimed database is based upon the individual customer's "transaction data from prior shopping visits." However, Nichtberger's column 17 lines 49-61 disclose storing and using coupon selections selected during a current visit.

Next, we review each appealed claim and show that Nichtberger does not disclose or suggest its limitations.

4. **Nichtberger Does not Disclose "circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer," as Recited in Claim 8 and Defined in Claims 9-11, 15, and 16**

Neither Nichtberger col. 11 lines 46-50 nor Nichtberger col. 17 [the office action lists col. 18, but the applicant believes this to be a typo] lines 49-61 disclose "circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer," as recited in claim 8 and defined in claims 9-11, 15, and 16.

Nichtberger col. 11 lines 46-50 states that:

> Coupon selection information is reported via a communications link to the local processor which controls the store's automated checkout (UPC code scanning) system, as indicated at 64. This facilitates a subsequent comparison of coupons selected to purchases made.

Nichtberger col. 11 lines 46-50 discloses that the customer selects coupons prior to shopping (Nichtberger figure 4, icons 58 and 62). Then after the customer shops (Nichtberger figure 4, icon 68), at the point of sale (POS), the selected coupons are matched with the purchases (Nichtberger figure 4, icon 64). In short, the passage discloses matching coupons with purchases at the POS for redemption.

Neither Nichtberger col. 11 lines 46-50, nor any part of Nichtberger discloses generating a customer response signal at POS, nor does Nichtberger disclose a database for generating a customer response signal at POS during the transaction, as recited in claim 8 and defined in claims 9-12.

At page 16 lines 9-23, the subject application discloses:

> A customer's bank checking account number provides a unique identification for that customer - - using this check ID, a customer record is created and included in the local customer database. The customer record includes an assigned customer verification status, as well as selected transactional data. Customer status designations include POSITIVE, NEGATIVE and CAUTION, while transactional data includes transaction frequency and dollar volume over given intervals (such as Day/Week/Total or DWT). . . . This customer information (customer status and transactional data) in the customer database is continuously updated (a) on a local basis through either processing check verification requests, or inputting customer status . . . .

At page 16 lines 9-23 of the subject application, the customer's checking account number is used to identify the customer and is stored in the local customer database. The record contains the information response signal (the verification status, for example POSITIVE, NEGATIVE, or CAUTION) and selected transactional data, for example, frequency and dollar value of transaction. The customer database being updated while processing a check verification request discloses that the generation of the customer information response signal takes place at the POS during the transaction; and it also discloses that the signal is related to a customer's transaction

data from prior store visits.

Nichtberger col. 17 lines 49-61 states that:

> Upon recognizing that a special card or receipt number has been scanned or key entered, the store's local processor requests the corresponding list of coupon selections from the CDR unit 20. The cash register terminal (or local processor) compares the customer's selections with the products actually being purchased, as indicated at 64, and applies credit accordingly, as indicated at 76. All discount transactions are reported to the store's accounts receivable system, electronically or otherwise, to properly account for coupons awaiting reimbursement. Further, coupons actually redeemed by each customer are also reported back to the CDR unit 20.

Nichtberger col. 17 lines 49-61 discloses that the local processor applies coupon credit at the POS. The discount transactions are reported to the store's accounts receivable system to account for coupon reimbursement from the coupon issuer and a report of coupons redeemed is also sent to the CDR (which displays coupons for customer selection prior to shopping). Nichtberger does not disclose these reports being generated in real time at the POS during the customer's transaction.

As stated above, page 16 lines 9-23 in the subject application discloses an information response signal and that the generation of the customer information response signal takes place at the POS during the transaction.

Neither Nichtberger col. 17 lines 49-61, not any part of Nichtberger, discloses a database for generating a customer response signal at POS, nor does Nichtberger disclose a database for generating a customer response signal at POS during the transaction, as recited in claim 8 and defined in claims 9-11, 15, and 16. Therefore, Nichtberger does not disclose "circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer," as

recited in claim 8 and defined in claims 9-11, 15, and 16. For this reason, the rejections of claims 8-11, 15, and 16 and the dependent claims that depend therefrom are improper and should be reversed.

5. **Nichtberger Does not Disclose "said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit," as Recited in Claim 8 and Defined in Claims 9-11, 15, and 16**

Nichtberger col. 17 lines 49-61 does not disclose "said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit," as recited in claim 8 and defined in claims 9-11, 15, and 16.

The text of Nichtberger col. 17 lines 49-61 is copied above. As stated above, Nichtberger col. 17 lines 49-61 discloses applying coupon credit at the POS and reporting discount transactions for coupon reimbursement from the coupon issuer.

As stated above, page 16 lines 9-23 in the subject application discloses an information response signal and that the signal is related to a customer's transaction data from prior store visits.

Neither Nichtberger col. 17 lines 49-61, nor any part of Nichtberger discloses generating a customer response signal at POS, nor does Nichtberger disclose said signal being related to a customer's prior transaction data. Therefore, Nichtberger does not disclose "said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit," as recited in claim 8 and defined in claims 9-11, 15, and 16. For this reason, the rejections of claims 8-11, 15, and 16 and the dependent claims that depend therefrom are improper and should be reversed.

6. **Nichtberger Does not Disclose "said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion," as Recited in Claim 8 and Defined in Claims 9-11, 15, and 16**

Nichtberger col. 17 lines 49-61 does not disclose "said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion," as recited in claim 8 and defined in claims 9-11, 15, and 16.

The text of Nichtberger col. 17 lines 49-61 is copied above. As stated above, Nichtberger col. 17 lines 49-61 discloses applying coupon credit at the POS and reporting discount transactions for coupon reimbursement from the coupon issuer.

As stated above, page 16 lines 9-23 in the subject application discloses an information response signal. At page 11 lines 4-12, the subject application states:

> Moreover, because the check transactional data is generated and maintained locally, it provides significant information about the store's customers over and above the information necessary for check verification risk management. New customers are readily identified, and frequency and dollar volume information may be used to establish customer profiles and to target advertising, marketing and promotional programs, and for other customer relations purposes.

Page 16 lines 9-23 in the subject application discloses check transactional data available for check verification risk management, in the form of at least a status indicator provided at POS, that the data is generated by a local database, and that the information can be used to target customer marketing. Therefore, the passage discloses a signal providing information at POS derived from the database and useful for effectuating targeted customer promotion, as recited in claim 8 and defined in claims 9-11, 15, and 16.

Neither Nichtberger col. 17 lines 49-61, nor any part of Nichtberger discloses generating a customer response signal at POS, nor does Nichtberger disclose said signal being useful for effectuating targeted customer promotion. Therefore, Nichtberger does not disclose "said signal

providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion," as recited in claim 8 and defined in claims 9-11, 15, and 16. For this reason, the rejections of claims 8-11, 15, and 16 and the dependent claims that depend therefrom are improper and should be reversed.

7. The Examiner has not Presented a Prima Facie Case for the Rejections of Dependent Claims 12-14

The applicant respectfully traverses the rejections of dependent claims 12-14 because the examiner has not shown that Nichtberger discloses the limitation "wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said detection of said unique identification code of said individual customer," as recited in dependent claim 12 and defined in dependent claims 13 and 14.

In the office action mailed February 17, 2006, the examiner only presented a rejection directly addressing independent claims 8-11, 15, and 16. The examiner (or the Board, if the Board is the first body to raise a particular ground for rejection) "bears the initial burden . . . of presenting a prima facie case of unpatentability." In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In the office action mailed February 17, 2006, the examiner rejected claims 12-14 without presenting a prima facie case of anticipation.

As stated above, Nichtberger does not disclose generating a customer response signal at POS; therefore, Nichtberger does not disclose "wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said detection of said unique identification code of said individual customer," as recited in dependent claim 12 and defined in dependent claims 13 and 14.

For this additional reason, the rejections of dependent claims 12-14 are improper and should be reversed.

8. Nichtberger does not, in Fact, Anticipate Claims 12-14

The applicant submits that Nichtberger does not disclose the limitation "wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said detection of said unique identification code of said individual customer," as recited in dependent claim 12 and defined in dependent claims 13 and 14.

The subject application discloses generating a customer information response signal at page 21 lines 14-22

In contrast, Nichtberger discloses whether a card (1) is a special card, (2) is a valid card, (3) is not expired, and (4) has been used for the current period. Nichtberger column 21 lines 4-26.

However, Nichtberger column 21 lines 4-26 does not disclose a response signal based upon a customer's transaction data, and the Nichtberger's disclosed generating is not done at the POS during a customer's transaction, it is done at CDR 20.

As Nichtberger does not disclose "wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said detection of said unique identification code of said individual customer," the rejections of claims 12-14 are improper and should be reversed.

H. 37 CFR 41.37 (c)(1)(viii) Claims Appendix

Appendix I is attached which contains a copy of the claims involved in the appeal.

I. 37 CFR 41.37 (c)(1)(ix) Evidence Appendix

There is no evidence submitted herewith under 37 CFR 41.37 (c)(1)(ix).

J. 37 CFR 41.37 (c)(1)(x) Related Proceedings Appendix

There are no related proceedings.

IV. **37 CFR 41.37 (c)(2)**

The applicant has not submitted any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence.

V. **37 CFR 41.37 (d)**

This appeal brief complies with all the requirements of paragraph (c) of this section.

VI. **37 CFR 41.37 (e)**

The filing of this appeal brief is timely.

Respectfully Submitted,

5/16/06

DATE

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DHS/BTM/RAN

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Appendix I

1.-7. Canceled.

8. (Previously presented) A system for accumulating customer transaction data at the point-of-sale in a retail establishment and for effectuating customer promotion on the basis thereof, comprising:

a terminal for entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction;

means for allowing entry of customer transaction data;

a processor and

a memory responsive to said terminal and said means allowing entry for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer,

said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit, and

said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion.

9. (Previously presented) A system for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising:

apparatus for entering unique customer identification codes from customer identification presented at the point-of-sale in said retail establishment;

a terminal for entering customer transaction data at the point-of-sale in said retail establishment;

a processor and

a memory responsive to said apparatus and said terminal for creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

circuitry associated with said memory and responsive to the entry of said individual customer's identification code during a transaction at the point-of-sale, said circuitry being operable to generate a customer information response signal at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit,

said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion.

10. (Previously presented) A method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of:

entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction;

entering customer transaction data;

creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code; and

generating a customer information response at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer,

said response signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit, and

said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion.

11. (Previously presented) A method for accumulating and using customer transaction data at the point-of-sale in a retail establishment comprising the steps of:

entering unique customer identification codes from customer identification presented at the point-of-sale in a retail establishment;

entering customer transaction data at the point-of-sale in said retail establishment;

creating a database for a plurality of the store's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transactions are stored in association with said individual customer's unique identification code;

accessing said database in response to the entry of said individual customer's identification code during a transaction at the point-of-sale;

determining from said database the transaction history of said individual customer; and

generating a customer information response at the point-of-sale representative of said individual customer's transaction history prior to the current shopping visit,

said response providing information at said point-of-sale derived from said database and useful for effectuating targeted customer promotion.

12. (Original) A system according to Claim 8,

wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said detection of said unique identification code of said individual customer.

13. (Original) A system according to Claim 9,

wherein said circuitry generates said customer information response signal as a function of analysis by said circuitry of said individual customer's transaction data following said entry of said individual customer's identification code.

14. (Original) A method according to Claim 10,

wherein said generating step includes the step of generating said customer information response as a function of analysis of said individual customer's transaction data following said detection of said unique identification code of said individual customer.

15. (Original) A method for providing customer services in a retail establishment, comprising the steps of:

entering into a point-of-sale terminal a unique identification code for a customer;

entering into said terminal transaction data relating to the customer's shopping transactions;

generating and maintaining a database, including the step of correlating said transaction data with said unique identification code;

responding to entry, during a current transaction, of said unique identification code for a customer by analyzing said transaction data of the customer, including data in said database from prior transactions, with or without data from the current transaction, in order to generate a response which is a function of said data in said database from prior transactions, and by

supplying said response to said terminal during said current transaction in which said unique identification code is entered,

said response including information for effecting a targeted promotion to the customer.

16. (Original) A method for providing services or promotions to customers in a retail establishment, comprising the steps of:

entering into a point-of-sale terminal an account number from a payment instrument presented by a customer,

and using said account number as a unique identification code for the customer;

entering into said terminal transaction data relating to the customer's shopping transactions;

generating and maintaining a database, including the step of correlating said transaction data with said unique identification code, said transaction data including data from at least one past transaction of each customer; and

using said database to effect customer services which include targeted marketing and/or promotions,

said using step including the step of analyzing said transaction data of the customer.

17. (Withdrawn) A computer implemented system for providing a signal at a point-of-sale depending upon a customer's shopping history, comprising:

a terminal for entering, during a transaction, a unique customer identification;

a database storing transaction data from prior transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer;

circuitry responsive to the entry of said unique customer identification at said terminal during said transaction for transmitting to said point-of-sale during said transaction a customer information response signal; and

wherein said customer information response signal depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification.

18. (Withdrawn) The system of claim 17 wherein said customer information response signal depends upon dollar amount of a plurality of prior purchases associated with said unique customer identification.

19. (Withdrawn) The system of claim 17 wherein said customer information response signal also depends upon a frequency of prior purchases associated with said unique customer identification.

20. (Withdrawn) The system of claim 17 wherein said terminal can also receive customer transaction data.

21. (Withdrawn) The system of claim 17 wherein said data regarding said individual customer's prior transactions stored in association with said individual customer's identification in said database includes transaction frequency and dollar amount.

22. (Withdrawn) A computer implemented method for providing a signal at a point-

of-sale depending upon a customer's shopping history, comprising the steps of:

entering in a terminal, during a transaction, a unique customer identification;

storing, in a database, transaction data from prior shopping transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with said an identification of that customer;

transmitting to a point-of-sale during said transaction a customer information response signal in response to the entry of said unique customer identification at said terminal during said transaction; and

wherein said customer information response signal depends upon data stored in said database indicating dollar amount of at least one prior purchase associated with said unique customer identification.

23. (Withdrawn) The method of claim 22 wherein said customer information response signal depends upon dollar amount of a plurality of prior purchases associated with said unique customer identification.

24. (Withdrawn) The method of claim 22 wherein said customer information response signal also depends upon a frequency of prior purchases associated with said unique customer identification.

25. (Withdrawn) The method of claim 22 further comprising the step of receiving in said terminal customer transaction data.

26. (Withdrawn) The method of claim 22 wherein said data regarding said individual customer's prior transactions stored in association with said individual customer's identification in said database includes transaction frequency and dollar amount.

27. (Currently Amended) A computer implemented system for updating data in a customer database, comprising:

a terminal for entering, during a transaction, a unique customer identification and transaction data for said transaction;

a database storing transaction data for a plurality of customers from prior shopping transactions, such that transaction data regarding prior transactions of a customer are stored in association with identification of that customer; and

circuitry responsive to the entry of said unique customer identification and said transaction data at said terminal for updating transaction data and a dollar amount of purchases associated with said unique customer identification in said customer database, and for storing in said customer database the date that transaction data association with said unique customer identification was updated.

28. (Withdrawn) The system of claim 27 wherein said circuitry updates said transaction data associated with said unique customer identification during said transaction.

29. (Withdrawn) The system of claim 27 wherein said database also stores a time of day that said transaction data was updated in association with said unique customer identification.

30. (Withdrawn) A computer implemented method for updating data in a customer database, comprising the steps of:

entering in a terminal, during a transaction, a unique customer identification and transaction data for said transaction;

storing, transaction data for a plurality of customers from prior shopping transactions, such that data regarding a prior transactions of a customer are stored in association with identification of that customer; and

updating transaction data and a dollar amount of purchases associated with said unique customer identification in said customer database in response to entry of said unique customer identification and said transaction data at said terminal; and

storing in said customer database the date that transaction data association with said unique customer identification was updated.

31. (Withdrawn) The method of claim 30 wherein said circuitry updates said transaction data associated with said unique customer identification during said transaction.

32. (Withdrawn) The method of claim 30 further comprising the step of storing in said database a time of day that said transaction data stored in association with said unique identification was updated.

33. (Withdrawn) A computer implemented customer database comprising stored transaction data from prior point-of-sale transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer said transaction data stored in association with an identification of that customer including:

dollar amount of purchases and time period.

34. (Withdrawn) A computer implemented customer database comprising stored transaction data from prior transactions for a plurality of customers, such that data regarding a customer's prior transactions are stored in association with an identification of that customer, said transaction data stored in association with said identification of that customer including:

total dollar amount of purchases purchased during a period of time.

35. (Withdrawn) The database of claim 34 wherein said period of time is one of a day and a week.

36. (Withdrawn) The database of claim 34 wherein said transaction data stored in association with said identification of that customer further comprises a number of transactions associated with an identification of a customer.

37. (Withdrawn) The database of claim 34 wherein said transaction data stored in association with said identification of that customer further comprises a frequency of transactions.

38. (Withdrawn) The database of claim 34 wherein said transaction data stored in association with said identification of that customer further comprises a frequency of transactions for a specified period of time associated with an identification of a customer.

39. (Withdrawn) The database of claim 38 wherein said specified period of time is one of a day and a week.

40. (Withdrawn) The system of any one of claims 17, 22, 27, 30, 33, and 34, wherein said database is local to the point-of-sale, said database stores transaction data from prior transactions for a plurality of customers such that data regarding a customer's prior transactions are stored in association with an identification of that customer, and said database is updatable from a global database concatenated from multiple store databases including said transaction data from the prior transactions of the customers at multiple stores.

41. (Withdrawn) The system of claim 17 wherein said database stores the date that transaction data association with said unique customer identification was updated.

42. (Withdrawn) The system of claim 17 wherein said terminal is in a first retail store, said database is a first store database, and said first store database is located at said first retail store.

43. (Withdrawn) The system of claim 42 further comprising:

a second store database local at a second retail store, said second store database storing transaction data from prior transactions at said second store for a plurality of customers, such that data regarding a customer's prior transactions are stored in said second store database in association with a unique identification of that customer; and

a global database storing transaction data from prior transactions in both said first retail store and said second retail store.

44. (Withdrawn) The system of claim 43 further comprising at least one data connection, said at least one data connection enabling transmission of data stored in said first store database and said second store database to said global database, and enabling transmission of data from said global database to each one of said first store database and said second store database.

45. (Withdrawn) The system of claim 44 configured to update customer records in said first store database based upon data stored in said global database.

46. (Withdrawn) The system of claim 44 configured to update customer records in said first store database based upon data stored in said global database for transactions that occurred in said second retail store.

47. (Withdrawn) The system of claim 46 configured to update customer records in said first store database based upon data transmitted to said global database from said second store database for transactions that occurred in said second retail store.

48. (Withdrawn) The system of claim 46 configured to update customer records in said second store database based upon data stored in said global database for transactions that occurred in said first retail store.

49. (Withdrawn) The database of claim 33, wherein said database is structured to

store in association with said identification of that customer transaction data including a first frequency of transactions by that customer during a first period of time.

50. (Withdrawn) The database of claim 49, wherein said database is structured to store in association with said identification of that customer transaction data including a second frequency of transactions by that customer during a second period of time.

51. (Withdrawn) The database of claim 50, wherein said database is structured to store in association with said identification of that customer transaction data including a third frequency of transactions by that customer during a third period of time.

52. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer transaction data including a first dollar amount for one or more transactions by that customer during a first time period.

53. (Withdrawn) The database of claim 52, wherein said database is structured to store in association with said identification of that customer transaction data including a second dollar amount for one or more transactions by that customer during a second time period.

54. (Withdrawn) The database of claim 53, wherein said database is structured to store in association with said identification of that customer transaction data including a third dollar amount for one or more transactions by that customer during a third time period.

55. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer a customer status.

56. (Withdrawn) The database of claim 55, wherein said database is structured to store in association with said identification of that customer a date/time that said customer status changed.

57. (Withdrawn) The database of claim 56, wherein said database is structured to store in association with said identification of that customer a previous status of said customer.

58. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer a user flag.

59. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer a transfer date/time indicating when the customer's record was last written to disk.

60. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer an access date/time indicating when the customer's record was last accessed and updated.

61. (Withdrawn) The database of claim 33, wherein said database is structured to store in association with said identification of that customer a total number of transactions since a last global update, said global update updating data stored in association with said identification of that customer based upon data stored in association with said identification of that customer in a second database.

62. (Withdrawn) The database of claim 61, wherein said database is structured to store in association with said identification of that customer a total dollar volume since said last global update.

63. (Withdrawn) The database of claim 33, wherein said database is structured so that it is indexed at least by customer identification.

64. (Withdrawn) The database of claim 33, wherein said database is structured so that it is indexed at least by status.

65. (Withdrawn) The database of claim 33, wherein said database is structured so that it is indexed at least by transfer date.

66. (Withdrawn) A computer implemented system comprising:

computer implemented customer database comprising stored transaction data from prior point-of-sale transactions, said stored transaction data comprising:

(1) data for a first customer such that data regarding said first customer's prior transactions are stored in a first customer record associating a first customer identification of said first customer with at least a first customer first dollar amount; and

(2) data for a second customer such that data regarding said second customer's prior transactions are stored in a second customer record associating a second customer identification of said second customer with at least a second customer first dollar amount;

a point of sale terminal;

a digital data processor;

and wherein said system is programmed to respond to transaction information received from the point of sale terminal including said first customer identification by identifying said first customer record in said database, and returning to said point of sale terminal a first customer information response signal;

wherein a value of said first customer information response signal depends at least in part upon data stored in said first customer record, including at least said first customer first dollar amount.

67. (Withdrawn) The system of claim 66 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer second dollar amount.

68. (Withdrawn) The system of claim 67 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer third dollar amount.

69. (Withdrawn) The system of claim 66 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer first frequency value.

70. (Withdrawn) The system of claim 69 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer second frequency value.

71. (Withdrawn) The system of claim 70 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer third frequency value.

72. (Withdrawn) The system of claim 67 wherein a value of said first customer information response signal also depends at least in part upon data stored in said first customer record, including at least a first customer first frequency value.

73. (Withdrawn) The system of claim 72 wherein said signal also depends at least in part upon data stored in said first customer record, including at least a first customer second frequency value.

74. (Withdrawn) The system of claim 66 wherein said signal also depends at least in part upon data stored in said first customer record, including at least a first customer first status value.

75. (Withdrawn) The system of claim 74 wherein said signal also depends at least in part upon data stored in said first customer record, including at least a first customer first flag value.

76. (Withdrawn) The system of claim 66 wherein said signal also depends at least in

part upon data stored in said first customer record, including at least a first customer first time value.

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